IN THE FAMILY JUSTICE COURTS OF THE REPUBLIC OF SINGAPORE

[2019] SGHCF 2

HCF/District Court Appeal No 16 of 2018

Between

ULV

… *Appellant*

And

ULW

… *Respondent*

In the matter of FC/Suit No 4 of 2017

Between

ULV

… *Plaintiff*

And

ULW

… *Defendant*

JUDGMENT

[Succession and Wills] — [Revocation] — [Later instrument]
[Succession and Wills] — [Testamentary capacity]

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v
ULW

[2019] SGHCF 2

High Court — HCF/District Court Appeal No 16 of 2018
Tan Puay Boon JC
14 August, 5 September 2018

9 January 2019 Judgment reserved.

Tan Puay Boon JC:

Introduction

1 The parties to the appeal are brothers. Their mother, [T], passed away in 2016, having executed two wills, one on 13 December 2004 and one on 7 June 2008. I will refer to these as "the 2004 Will" and "the 2008 Will" respectively. The appellant propounds the 2008 Will and the respondent propounds the 2004 Will. It is not disputed that the 2004 Will is valid; the only question is whether it has been revoked by the 2008 Will.

2 The District Judge decided that the 2008 Will was not valid and therefore did not revoke the 2004 Will. Having considered the relevant facts and circumstances of the case, I agree with her decision on the basis that it has not been proved that [T] knew and approved of the contents of the 2008 Will. The reasons for my decision are set out herein.

Facts

The two wills

3 The testatrix, [T], was born in 1929 and died a widow on 3 August 2016. She was succeeded by her five children: [L], a daughter, and [K], [J], the appellant and the respondent, all sons.[1] Besides [T]'s children, evidence was also received from two of [K]'s daughters, [N] and [C], as well as [T]'s caregiver. It is generally agreed that [C] was [T]'s favourite granddaughter. [C], though not [N], was a beneficiary under the 2004 Will and was also mentioned in the 2008 Will.

4 In 2004, [T] went by herself to M/s K K Yap & Partners.[2] She had previously told [C] of her intention to make a will, and [C] wrote the beneficiaries' names on a piece of paper for [T] because [T] would otherwise not be able to spell them as she was illiterate.[3] [C] was overseas at the time the 2004 Will was made but [T] showed it to her subsequently when she visited home.[4] The 2004 Will states:[5]

> 1. I appoint my son, [the respondent] to be my Executor and Trustees("my Trustee") of this my Will.
>
> …
>
> 3. Subject to the payment of my just debts, funeral and testamentary expenses and all estate duties on any legacies or annuity given or on any gift made free of duty, **I GIVE DEVISE** and **BEQUEATH** all my movable and immovable property whatsoever and wheresoever not hereby or by any codicil hereto specifically disposed of including any property (both real or

1 Appellant's Case at para 2.

2 [C]'s testimony in NE (26 January 2018) at p 5 lines 1–4 (ROA Vol 3, p 648).

3 [C]'s testimony in NE (26 January 2018) at p 8 line 19 – p 9 line 25 (ROA Vol 3, pp 651–652).

4 [C]'s testimony in NE (26 January) at pp 14–15 (ROA Vol 3, pp 657–658).

5 ROA Vol 4, pp 1063–1065.

> personal) over which I may have a general appointment or disposition by Will to my Trustee UPON TRUST to sell, call in and convert the same with power to postpone such sale, calling in and conversion for so long as my Trustee shall think fit without being liable for loss.
>
> 4. My Trustee shall stand possessed of the moneys arising therefrom together with any ready monies forming part of my estate UPON TRUST for the following beneficiaries in the following shares, namely:-
>
> (a) 12.5% to my daughter, [L];
>
> (b) 12.5% to my son, [K];
>
> (c) 37.5% to my son, [the respondent];
>
> (d) 12.5% to my son, [J];
>
> (e) 12.5% to my son, [the appellant]; and
>
> (f) 12.5% to my granddaughter, [C]
>
> …
>
> [emphasis in original]

5 The 2004 Will was stored in [T]'s security box at the respondent's house, where she also kept her jewellery, other valuable possessions and important documents, such as certificates for fixed deposits.[6] Nobody else had a key to this security box and [C] was the only person who knew the combination code.[7]

6 [T]'s husband passed away on 22 August 2007. Sometime in early 2008, [T] received news that her flat was subject to the Housing Development Board ("HDB")'s Selective En Bloc Redevelopment Scheme, and that the replacement flat would be at Blk 79B Toa Payoh Central ("the Flat"). [T] then approached some of her children individually, including the appellant, the respondent and

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6 The respondent's AEIC, Exhibit "KKY-X07", para 2.4 (ROA Vol 5, p 1202); [C]'s testimony in NE (26 January 2018) at p 96 lines 14–23 (ROA Vol 3, p 739).

7 The respondent's AEIC, Exhibit "KKY-X07", para 2.3 (ROA Vol 5, p 1202); [C]'s testimony in NE (26 January 2018) at p 17 lines 8–10 (ROA Vol 3, p 660).

[K], to invite them to move into the Flat with her. (There is a dispute about whether she approached the appellant first or last, but nothing turns on this.) [T] offered to let [K] stay in the Flat either on condition that he pay rent of $500, or purchase the flat from her directly.[8] According to the respondent, the condition was that he pay reasonable rent and help to pay for utilities.[9] Both the respondent and [K] declined [T]'s offer. Eventually, [T] agreed to let the appellant and his family move into the Flat on condition that he give [T] the proceeds from the sale of his own HDB flat in Tampines, which were estimated at about $120,000 to $130,000.[10] [T] moved into the Flat in April 2008 and the appellant and his family joined her sometime in May 2008.[11] It is undisputed that the appellant never paid [T] the proceeds of sale of his Tampines flat.[12] It appears that [T]'s relationship with the appellant deteriorated after they began living together in 2008. I elaborate on this later on in the judgment.

7 On 7 June 2008, [T] executed the 2008 Will at the office of M/s K K Yap & Partners, which was by then known as LawHub LLC. The 2008 Will was drafted by Ms Neo Shien Ching ("Ms Neo"). Ms Neo did not enquire as to whether there was any previous will, though she claimed that it was her usual practice to emphasise to the testator that the will would revoke all former wills.[13] The 2008 Will states:[14]

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8 NE (25 January 2018) at pp 28–29, p 53 lines 17–23 (ROA Vol 3, pp 588–589).

9 The respondent's AEIC at para 6 (ROA Vol 5, p 1077).

10 [C]'s and [N]'s joint affidavit, para 4(g) (ROA Vol 6, p 1411); [C]'s AEIC at para 15 (ROA Vol 5, p 1303); Appellant's Case at paras 3–4 and 48.

11 Appellant's Case at para 5.

12 [C]'s AEIC at para 15(c) (ROA Vol 5, p 1303); [C]'s testimony in NE (26 January 2018) at p 23 line 24 – p 24 line 13; p 90 lines 29–32; p 94 line 26 – p 95 line 22 (ROA Vol 3, pp 666–667, 733, 737–738).

13 NE (22 January 2018) p 104 line 21 – p 105 line 17 (ROA Vol 1, pp 148–149).

14 ROA Vol 4, pp 990–991.

> 1. I appoint my son, [the appellant] to be the sole Executor and Trustee ("my Trustee") of this my Will.
>
> …
>
> 3. I wish to transfer my property ownership at [the Flat] to my son [the appellant].
>
> 4. In exchange for the transfer abovementioned, I wish that my said son, [the appellant] to distribute S$130,000.00 from his own funds to the following:
>
> (a) [L] for the sum of S$20,000.00
>
> (b) [K] for the sum of S$20,000.00
>
> (c) [the respondent] for the sum of S$50,000.00
>
> (d) [J] for the sum of S$20,000.00
>
> (e) [C] for the sum of S$20,000.00
>
> 5. Subject to the payment of my just debts, funeral and testamentary expenses and all estate duties on any legacies or annuity given or on any gift made free of duty, **I GIVE DEVISE** and **BEQUEATH** all my cash in hand including savings and current accounts, fixed deposits with any bank or financial institution, stocks, shares and debentures which I may be possessed or to which I may be entitled at my death, and all my movable and immovable property including my property at [the Flat] whatsoever and wheresoever not hereby or by any codicil hereto specifically disposed of including any property over which I may have a general appointment or disposition by Will to my said son, [the appellant] for his sole use and benefit absolutely.
>
> [emphasis in original]

8 The appellant was present when the 2008 Will was made. The will was kept in his custody until after [T]'s death. The other siblings deny all knowledge of the 2008 Will throughout this period, though the appellant claims that his brothers [K] and [J] knew of it.[15]

9 [T] passed away on 3 August 2016. The family met at [K]'s home on 19 August 2016, where the respondent produced the 2004 Will. The appellant then

[15] Appellant's Case at para 10; NE (23 January 2018) at p 74 lines 23–29 (ROA Vol 2, p 319).

produced the 2008 Will, which appeared to take the other family members by surprise. The proceedings below were commenced on 13 March 2017.

The 2011 Document

10 When the appellant produced the 2008 Will, it was attached to another piece of paper. This was a document which had been prepared by [J] and which was signed by [T] in his and the appellant's presence on 23 July 2011 ("the 2011 Document"). It states:[16]

> **I, [T] HEREBY DECLARE** that I wish to transfer my property ownership at [the Flat] to my youngest son [the appellant].
>
> In exchange for the transfer property abovementioned.
>
> I have received from my said son, [the appellant] an amount **CASH** for the sum of **S$150,000.00** for his sole use and benefit absolutely.
>
> IN WITNESS WHEREOF I have hereunto set my hand this 23th day of July 2011.

11 The document was signed by the appellant and by [J] as witness. It also bore a thumbprint over the words "SIGNED BY the abovenamed [T] As having received S$150,000.00 CASH from said son [the appellant] to transfer her property of [the Flat]". This was annotated with the following handwritten words: "In the presence of us both we being both present at the same time having read over and explained to her in Hokkien dialect wherein she understand and approve the contents."

12 The evidence surrounding the 2011 Document is very unclear. [J] admitted to having prepared the document. He confirmed that the signature was his and that he had penned the handwritten clause at the foot of the 2011 Document. [J] claimed that, a few days before the 2011 Document was signed,

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16 ROA Vol 4, p 1000.

the appellant called him and said that [T] had been chasing him for money. The appellant said he had borrowed $150,000 to pay [T], but was afraid that [T] would subsequently deny having received that money. [J] therefore did a Google search for "some template" and the appellant told him to write that the payment would be in exchange for the Flat.[17]

13 [J] said that he witnessed [T] receiving $150,000 from the appellant, though he could not remember if this was received in cash or by cheque.[18] The respondent does not dispute that the sum of $150,000 was in fact received by [T].[19] ([L] also testified to having received $20,000 from [T], though she did not know if this was from the $150,000 which the appellant gave [T], and was not asked when she had received it.[20] None of the other witnesses testified to receiving sums of money from [T] out of the $150,000 which the appellant had given her.) [J] said he did not know how much the appellant owed [T] or what the money was being paid for.[21] It was "possible" that the sum of $150,000 was payment for the Flat.[22] It is also unclear how to reconcile [J]'s evidence that he had prepared the 2011 Document with his evidence that the appellant was the one who brought the 2011 Document to meet [T] and [J]. According to [J], the appellant asked them to sign the 2011 Document without explaining the contents or giving them a chance to examine it.[23] I should also add that the

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17 NE (29 January 2018) at p 15 line 7 – p 16 line 29 (ROA Vol 4, pp 818–819).

18 NE (29 January 2018) at p 30 lines 9–13 (ROA Vol 4, p 833).

19 NE (29 January 2018) at p 71 lines 16–19 (ROA Vol 4, p 874); Minute Sheet dated 14 August 2018, p 2.

20 NE (24 January 2018) at p 151 lines 18–32 (ROA Vol 2, p 544).

21 NE (29 January 2018) at p 14 line 18 – p 19 line 11 (ROA Vol 4, pp 821).

22 NE (29 January 2018) at p 24 lines 2–3 (ROA Vol 4, p 827).

23 NE (29 January 2018) at p 30 line 29 – p 31 line 21, p 33 lines 23–24 (ROA Vol 4, pp 833–834).

appellant's pleadings did not include any claim for this $150,000 in the event the 2008 Will was not upheld.

14 It should be noted that the handwritten clause at the foot of the 2011 Document is nearly identical to the following clause in the 2008 Will:

> SIGNED BY the abovenamed [T] as her Last Will and Testament in the presence of us both we being both present at the same time (the same having been read over and explained to her by the undersigned [Ms Neo] in the Hokkien dialect wherein she appeared to understand and approve the contents thereof) who at the request in her sight and in the presence of each other have hereunto subscribed our names as witnesses …

15 However, [J] denied having copied the clause from the 2008 Will. He said he did not know about the 2008 Will until [T] passed away, and that he had copied the clause "blindly" from the Internet after making a Google search for "some kind of IOU transfer of … property".[24] He also denied that [T] wanted to transfer the Flat to the appellant, even though that is the apparent import of the 2011 Document. [J] claimed that he copied the other provisions of the 2011 Document "blindly from the Internet" and that it was just an IOU note to enable the appellant to reclaim the $150,000 if [T] subsequently denied receiving it.[25] The District Judge did not make any findings regarding the 2011 Document.

16 I now briefly outline the parties' cases before summarising the reasons for the District Judge's decision.

The parties' cases

17 The appellant propounded the 2008 Will and submitted that it accurately expressed [T]'s intentions. He claimed that [T] intended to give the Flat to him

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24 NE (29 January 2018) at p 22 lines 12 – p 25 line 27 (ROA Vol 4, pp 825–828).

25 NE (29 January 2018) at p 35 lines 3–15 (ROA Vol 4, p 838).

in exchange for $130,000, and that [T] chose to effect this arrangement by way of a testamentary disposition because the appellant could not be included as an owner of the Flat as he had already previously enjoyed two housing subsidies.[26] The appellant also submitted that [T] understood the effect of the 2008 Will as it was not the first time she was making a testamentary disposition, knew and approved of its contents, and did not make it under undue influence or the effects of fraud.[27] Further, [T] was strong-minded and independent. Her decision to will the Flat to the appellant, provided that he distribute $130,000 amongst her other children and eldest granddaughter, was in line with her tendency to favour the appellant and to look after and aid her children.[28] [T]'s outbursts of anger towards the appellant were likely the result of [T]'s other children pressurising her to obtain more money from him.[29] The appellant also relied on the 2011 Document as evidence that [T] intended the appellant to acquire the Flat.[30]

18 The respondent mounted five challenges to the validity of the 2008 Will: (1) that [T] had no testamentary capacity at the time the 2008 Will was executed; (2) that [T] did not know or approve of the contents of the 2008 Will; (3) that the 2008 Will was executed under the appellant's undue influence; (4) that the 2008 Will was not valid because it lacked the essential characteristic of revocability; and (5) that the 2008 Will was void for illegality because it sought to disguise what was in substance the sale of the Flat so as to avoid stamp duties and HDB levies.[31] The respondent emphasised that there was extreme animosity

26 Appellant's Case at paras 25–26.

27 Appellant's Case at paras 31–32 and 37; Statement of Claim at paras 10–12 (ROA Vol 6 pp 1322–1324).

28 Appellant's Case at paras 38–41.

29 Appellant's Case at para 57.

30 Appellant's Case at para 52.

31 Defence and Counterclaim (Amendment No 1) at paras 3(i), 3(iv), 6, 7, 8 (ROA Vol 6 p 1339–1341, 1345); Respondent's Case at paras 2.5, 4.0, 4.3 and 5.0.

between the appellant and [T] and that the 2008 Will could not have represented [T]'s testamentary wishes.[32]

The District Judge's decision

19 The District Judge framed the key issues as (1) [T]'s understanding of the consequences of her instructions to her solicitor, and (2) whether the appellant had exercised pressure on [T] resulting in the execution of the 2008 Will (*ULV v ULW* [2018] SGFC 44 ("the GD") at [16]). The District Judge found that the 2008 Will was not valid, though the precise grounds for her finding are not entirely clear.

20 First, the District Judge pointed out the imprecision of the 2008 Will and observed that there appeared to have been no real discussion between Ms Neo and [T] regarding the difficulties posed by [T]'s instructions and the lack of clarity of the drafted clauses (the GD at [21] and [24]). The lack of discussion put [T]'s understanding of the contents of the 2008 Will in doubt (the GD at [25]).

21 The District Judge accepted that [T] had testamentary capacity at the time of executing the 2008 Will. She also correctly recognised that this would ordinarily give rise to a rebuttable presumption that [T] knew and approved of the contents of the 2008 Will. However, that presumption did not arise when there were circumstances surrounding the execution which would raise a well-grounded suspicion that the will did not express the mind of the testatrix (the GD at [26]). It was the District Judge's view that the circumstances surrounding the execution of the 2008 Will pointed to a situation where [T], "in her haste to recover monies which she believed the plaintiff owed her, entered into some

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[32] Defence and Counterclaim (Amendment No 1) at para 7 (ROA Vol 6 pp 1342–1344).

form of understanding and one of the acts to further her haste to recover such monies, was to transfer the HDB flat to him" (the GD at [27]). In particular, there was initially an agreement between [T] and the appellant for the appellant to give [T] money in exchange for permission to stay with her (the GD at [27(i)]). However, it appeared that this understanding was not honoured, causing [T] to behave hostilely towards the appellant (the GD at [27(iv)]). The District Judge also observed that the circumstances regarding the preparation and execution of the 2008 Will stood in sharp contrast to those regarding the 2004 Will and were incongruous with the way in which [T] treated her descendants (the GD at [27(v)] and [27(vi)]). Finally, the District Judge thought that the terms of the 2008 Will were constrained by the appellant's financial means and therefore had not been executed by [T] "with a free mind and spirit". For a will to be a true reflection of the testator's intentions, it had to be made "free from pressure", which was not the case here (the GD at [27(viii)]).

22 Having articulated these considerations, the District Judge stated that "it [could not] safely be concluded [that the 2008 Will was] one which reflects the true will of the testatrix". She therefore found that the 2008 Will was not valid and the 2004 Will had not been revoked (the GD at [29]).

My decision

23 It is settled law that for a will to be found valid, three elements must be satisfied: the testator must (a) have the mental capacity to make a will; (b) have knowledge and approval of the contents of the will; and (c) be free from undue influence or the effects of fraud (*Chee Mu Lin Muriel v Chee Ka Lin Caroline (Chee Ping Chian Alexander and another, interveners)* [2010] 4 SLR 373 ("*Muriel Chee*") at [37]). It is also well-established that a will must be revocable and take effect upon the testator's death (*Theobald on Wills* (John G Ross

Martyn *et al* eds) (Sweet & Maxwell, 18th Ed, 2016) ("*Theobald on Wills*") at para 1-001).

24 The legal burden of propounding a will lies in every case upon the party propounding the will (*Muriel Chee* at [40], [46] and [52]; *Theobald on Wills* (15th Ed, 2001) at pp 35–38, cited in *R Mahendran and another v R Arumuganathan* [1999] 2 SLR(R) 166 ("*Mahendran*") at [15]). In this case, the respondent argues that [T] lacked testamentary capacity; did not have knowledge of and did not approve the contents of the 2008 Will; and executed the 2008 Will under undue influence. He also argues that the 2008 Will was not revocable, and that it was invalid because it sought to cheat the Inland Revenue Authority of Singapore ("IRAS") of stamp duty and HDB of levies payable on transfer. I address these arguments in turn.

Testamentary capacity

Legal principles

25 The propounder of a will bears the legal burden of proving testamentary capacity (*Muriel Chee* at [40]). The essential requisites of testamentary capacity are that: (i) the testator understands the nature of the act and what its consequences are; (ii) he knows the extent of his property of which he is disposing; (iii) he knows who his beneficiaries are and can appreciate their claims to his property; and (iv) he is free from an abnormal state of mind (*eg*, delusions) that might distort feelings or judgments relevant to making the will (*Muriel Chee* at [37], citing *Banks v Goodfellow* (1870) LR 5 QB 549 ("*Banks v Goodfellow*") at 565). As regards the first requirement, the testator need not be able to "view his will with the eye of a lawyer" or "comprehend its provisions in their legal form"; it suffices if "he has such a mind and memory as will enable him to understand the elements of which it is composed, and the disposition of

his property in its simple forms" (*Banks v Goodfellow* at 567). It should also be noted that the capacity to make a will may vary depending on the complexity of the testator's affairs and family situation, and on whether the will is a simple or complicated one. This is stated in *Theobald on Wills*, a treatise cited by the appellant, at para 3-002, and is further supported by *Halsbury's Laws of Singapore* vol 15 (LexisNexis, 2016 Reissue) ("*Halsbury's*") at para 190.190. In determining testamentary capacity, the court must consider the totality of the evidence as a whole, including both the factual component (including evidence of friends and relatives who had the opportunity to observe the testator) and the medical component, and generally accord equal weight to both types of evidence so long as both the factual and medical witnesses had the opportunity to observe the testator at the material time (*Muriel Chee* at [38]).

26 Testamentary capacity will generally be presumed when the will was duly executed in ordinary circumstances where the testator was not known to be suffering from any kind of mental disability. One indication of testamentary capacity is the rationality of the will, having regard to its terms and the identities of the beneficiaries (*Muriel Chee* at [40], citing *George Abraham Vadakathu v Jacob George* [2009] 3 SLR(R) 631 at [33]–[36] and [67]). *Theobald on Wills* states at para 3-010 that if a duly executed will is rational on its face, the testator is presumed to have had testamentary capacity.

27 Having set out the applicable legal principles, I turn now to the evidence. In my view there is insufficient evidence that [T] lacked testamentary capacity.

The family members' evidence

28 At the time the 2008 Will was executed, [T] was nearly 80 years old. The respondent and his witnesses testified that, at the time, [T] was illiterate,

short-sighted, short of hearing, had a history of illness and "had very poor mental recognition".[33] [J] explained that what he meant by "poor mental recognition" was that [T] would always repeat herself.[34] [K] similarly elaborated that [T]'s memory was failing and deteriorating from the age of about 71 or 72 (ie, 2000/2001) until her death, and she would often forget what she had said earlier.[35] [C] testified that [T] was lucid until she was about 74 or 75 and that, after that, [T] began repeating herself a lot. She was allegedly very forgetful from 2013 onwards.[36] However, I do not think that mere bodily ill-health and imperfect memory are sufficient to vitiate testamentary capacity. I am supported in this view by G Raman, *Probate and Administration in Singapore and Malaysia* (LexisNexis, 3rd Ed, 2012) at p 32, citing *Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yuok Chin & Anor* [2003] 2 MLJ 97 at 144.

29 More pertinently, both [K] and [L] testified that [T] told them that the appellant had asked her to sign a piece of paper the contents of which she did not understand.[37] However, it is not clear that the document [T] was referring to was the 2008 Will; she may, for example, have been referring to the 2011 Document. [L] did not say when [T] told her this. [K] claimed that [T] mentioned this to him after a visit to HDB, but there was some doubt about when this visit happened. [K]'s affidavit of evidence-in-chief ("AEIC") originally stated that the visit to HDB occurred in 2011–2012, but during his evidence-in-chief [K] corrected this to 2009. [K] gave no explanation for the

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33 [K]'s AEIC at para 3 (ROA Vol 5, p 1309); [J]'s AEIC at para 3 (ROA Vol 5, p 1241); [C]'s AEIC at para 15(c) (ROA Vol 5, p 1304).

34 NE (26 January 2018) at p 140 line 2 (ROA Vol 3, p 783).

35 NE (24 January 2018) at p 55 line 20 – p 56 line 6 (ROA Vol 2, pp 448–449).

36 NE (26 January 2018) at p 21 lines 3–26 and p 72 line 17 – p 73 line 18 (ROA Vol 3, pp 664, 715–716).

37 NE (24 January 2018) at p 74 lines 11–20 (ROA Vol 2, p 467); NE (24 January 2018) at p 126 lines 27–29 (ROA Vol 2, p 519).

amendment save to say that it had taken him more than a year to recollect the correct date.[38] [J] also alluded to [K] bringing [T] to HDB because she was worried about the Flat, but estimated that this occurred "maybe after 2011".[39] If the visit to HDB occurred in 2011–2012, it is possible that the document [T] was referring to was the 2011 Document rather than the 2008 Will.

30 Moreover, the following passage from [K]'s cross-examination suggests that [T] was lucid as of 2009:[40]

> Q: … If---if your---if your mother was so concerned that she have been tricked because she signed the piece of paper, did you---did you or any of your brothers bring her to see a lawyer to---to get the---a will done after 2009?
>
> Interpreter: "Well, we were of the view that everything that my mother did she was well aware and she take"---
>
> A: (speaking in a different language) "well aware" [as spoken by Witness].
>
> …
>
> A: Everything my mother did she would---she wouldn't it---even when my mother was young, she had always been like that. She would just do things the way she wanted. Whether it was right or wrong for her to do it, it doesn't matter.

31 There was also evidence that [T] visited a medical institution for treatment on more than 300 occasions after June 2008. She would usually take a bus there on her own, although occasionally the respondent would send her. This shows that she was sufficiently lucid to navigate her surroundings independently. Sometimes she would even reject the respondent's offers to send her by car, insisting on making her own way to the medical institution so as to be there early.[41] [T]'s conduct after 2008 – for example getting one of her sons

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38 NE (25 January 2018) at p 63 line 11 (ROA Vol 3, p 623).

39 NE (29 January 2018) at p 58 lines 5–14 (ROA Vol 4, p 861).

40 NE (24 January 2018) at p 75 lines 12–24 (ROA Vol 2, p 468).

to drive her to HDB so that she could ascertain the legal ownership of the Flat – also shows that she was lucid well after the execution of the 2008 Will.

Ms Neo's evidence

32 Ms Neo, the solicitor who had taken [T]'s instructions in 2008 and drafted the 2008 Will, deposed that throughout her meeting with [T], [T] "appeared lucid and sound of mind" and "was able to comprehend information, make decisions, and to communicate her desires and wishes". She also testified during the trial that [T] appeared to understand the will.[42] While the respondent made much of Ms Neo's use of the phrase "appeared to understand" as opposed to simply "understood",[43] I agree with the District Judge's analysis at [21] of the GD regarding the meaning of that phrase.

Dr Koh's evidence

33 Evidence was received from Dr Koh Jan Ming Ian ("Dr Koh"), a doctor at Toa Payoh Polyclinic and [T]'s family doctor. [T] was a patient at this polyclinic from November 2000 to December 2015.[44] She had a history of chronic medical problems including hypertension, diabetes and hyperlipidaemia. She was also assessed to have low cognitive function because she scored 5 out of 10 on the Abbreviated Mental Test ("AMT") administered to her on 8 October 2015.[45] Dr Koh explained at trial that the AMT was a

41 The respondent's testimony in NE (30 January 2018) at p 2 line 6 – p 4 line 16 (ROA Vol 4, pp 934–936).

42 Ms Neo's AEIC at para 7 (ROA Vol 4, p 1050); NE (22 January 2018) pp 77–78 (ROA Vol 1, pp 121–122).

43 Respondent's Case at p 34.

44 Dr Koh's AEIC, para 3 (ROA Vol 5, p 1289) and Medical Report at para 1 (ROA Vol 5, p 1292).

45 Dr Koh's AEIC, para 4 (ROA Vol 5, p 1290) and Medical Report at para 8 (ROA Vol 4, p 1293).

questionnaire. The patient would be asked, for example, to give his or her home address, age and date of birth; who the current Prime Minister was; to count down from twenty to one; and to remember a specific phrase and then recount it a few questions later. If all the questions were answered correctly, the patient would score 10 out of 10. Dr Koh explained that if a patient scored 7 out of 10 or lower, he or she would be suspected of having cognitive impairment. However, this was only a screening questionnaire and not used to diagnose cognitive impairment or to assess the severity of cognitive impairment, so Dr Koh was unable to confirm whether [T] was cognitively impaired.[46]

34 Importantly, Dr Koh testified that he remembered [T] "very clearly" from September to December 2015. She was not screened formally but based on clinical observation, there was nothing prompting Dr Koh to suspect she had any cognitive difficulties. She could communicate with Dr Koh well and could explain her reasons for her actions. As late as 2014 she was "definitely" lucid.[47]

35 Given the evidence that I have summarised above, I do not think it can be said that [T] probably lacked testamentary capacity at the time of the 2008 Will. I now turn to the requirement of knowledge and approval.

Knowledge and approval of the contents of the 2008 Will

Legal principles

36 The testator must know and approve the contents of the will. "[A] will must be the result of a testator's own intelligence and volition, though its contents need not originate from the testator provided he understands and

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46 NE (25 January 2018) at p 9 line 14 – p 11 line 11, p 16 lines 9–13 (ROA Vol 3, pp 569–571, 576).

47 NE (25 January 2018) at p 14 line 13 – p 15 line 25 (ROA Vol 3, pp 574–575).

approves them" (*Theobald on Wills* at para 3-017; the same is stated in Roger Kerridge, *Parry and Kerridge: The Law of Succession* (Sweet & Maxwell, 13th Ed, 2016) ("*Parry and Kerridge*") at para 5-24). The test for approval and knowledge, as stated in *Theobald on Wills* at para 3-017 (citing the English Court of Appeal's decision of *Gill v Woodall* [2011] Ch 380 ("*Gill v Woodall*")) is whether the testator understood (a) what was in the will when he signed it; and (b) what its effect would be. This requirement is also sometimes described by saying that the will must reflect the true intentions of the testator (*Muriel Chee* at [49], citing *Fuller v Strum* [2002] 1 WLR 1097 at [65]; *Gill v Woodall* at [14]). However, the testator need not comprehend the full effect of the words used in the will, and the will may be valid even if he was mistaken as to the legal effect of the provisions (*Theobald on Wills* at para 3-018; *Halsbury's* at para 190.194).

37 Once testamentary capacity is established, a rebuttable presumption arises that the testator knew and approved the contents of the will and the evidential burden shifts to the opponent of the will to rebut this presumption. This presumption, however, will not operate where there were circumstances attending or relating to the preparation and execution of the will which would raise a well-grounded suspicion that the will did not express the mind of the testator (*Muriel Chee* at [46]; *Lian Kok Hong v Lian Bee Leng* [2016] 3 SLR 405 ("*Lian Kok Hong*") at [65]). In that regard, the applicable principles are as follows:

> (a) Any circumstances which have nothing to do with the preparation and execution of the will are to be disregarded (*Lian Kok Hong* at [58] and [59]). While conduct subsequent to the preparation and execution of the will may be taken into account, such conduct "must have a direct bearing on whether the testator knew and approved of the

contents of the will" (*Lian Kok Hong* at [60] and [63]). I understand this to mean that subsequent conduct is only relevant in so far as it constitutes evidence of the contemporaneous circumstances relating to the preparation and execution of the will.

(b) There is no magic formula (comprising a certain fixed number of factors or criteria) to ascertain whether the circumstances surrounding a will are suspicious. The degree of suspicion will vary with the circumstances of the case (*Muriel Chee* at [47]).

(c) An example of a suspicious circumstance is where a will was prepared by a person who takes a substantial benefit under it, or who procured its execution, such as by suggesting the terms to the testator or instructing a solicitor to draft the will which is then executed by the testator alone (*Muriel Chee* at [48]).

(d) Where suspicious circumstances exist, the propounder of the will must prove on a balance of probabilities that the testator knew and approved of the contents of the will by adducing affirmative evidence of the testator's knowledge and approval. The greater the degree of suspicion, the stronger the affirmative proof of the testator's knowledge and approval must be to dispel the suspicion (*Lian Kok Hong* at [70]; *Mahendran* at [15], cited in *Muriel Chee* at [46]; *Theobald on Wills* at para 3-024). The court will typically look for evidence that the testamentary instrument was read over by, or to, the testator, or evidence that the testator gave instructions for the drafting of the will and that the will was drafted in accordance with those instructions (*Muriel Chee* at [48], citing *Barry v Butlin* (1838) 2 Moo PC 480 ("*Barry v Butlin*") at 483–485). Under ordinary circumstances, the reading of a will to a

> testator not suffering from any mental infirmity would be sufficient evidence of his understanding or knowledge of the contents (*Muriel Chee* at [56]). Proving that the terms of the will were read to or explained to the testator is "the best way to show that the testator understood the terms of the will (assuming he had testamentary capacity and his mind was not unduly influenced by some part or event)" (*Lian Kok Hong* at [72]), though it is not the only way (*Barry v Butlin* at 485–486).

38 Given my finding that [T] had testamentary capacity at the time of making the 2008 Will, she is also presumed to have known and approved of its contents. The first question is then whether there are suspicious circumstances that would displace this presumption.

Whether there were suspicious circumstances

39 It appears that the District Judge found that the presumption that the testator knew and approved of the contents of the 2008 Will did not arise due to suspicious circumstances (the GD at [26]–[27]). However, some of the points made at [27] of the GD – for example that the 2008 Will was kept in the appellant's custody, and the lock-out incident in 2010 (see [51] below) – do not relate to the preparation and execution of the will, and therefore are not the type of suspicious circumstances that can prevent the presumption from arising (see [37(a)] above).

40 In my view, the only apparent suspicious circumstance which relates to the preparation and execution of the will is that the appellant, who is the sole beneficiary under the 2008 Will, was present at the signing of the 2008 Will. He stood to receive the greatest pecuniary gain under the 2008 Will, even if he were to comply with [T]'s "wish" by distributing $130,000 from his own funds to the

persons listed in the will. However, the appellant's mere presence at the time the 2008 Will was prepared and signed is not sufficient to constitute a suspicious circumstance; it must be shown that he somehow influenced the contents of the will, for example by suggesting terms to [T] or instructing Ms Neo (see [37(c)] above). But Ms Neo's evidence is that she took instructions from [T] directly in Hokkien.[48] I therefore do not count the appellant's presence as a suspicious circumstance.

Whether the presumption has been rebutted

41 The next question is whether the presumption of knowledge and approval has been rebutted on the evidence. I consider that it has, for two main reasons. The first is that the provisions of the 2008 Will are on their face contradictory and the evidence does not satisfy me that they were explained to, understood by and approved by [T]. The second is that [T]'s conduct towards the appellant and her conversations with other family members suggest that she did not fully grasp the provisions of the 2008 Will, in particular that the appellant would inherit the Flat upon her death. I elaborate on these in turn.

(1) The contents of the 2008 Will

42 The terms of the 2008 Will were drafted curiously. The legal difficulties are described in the GD at [18] and [24]. Chief among these is the fact that the Flat appears twice in the 2008 Will. First the Will states at cll 3–4 that [T] "wish[es]" to transfer ownership of the Flat to the appellant "in exchange for" him distributing $130,000 from his own funds to the listed persons. This makes it sound as though the Flat is a conditional gift, *ie*, a gift which fails if the specified condition fails to materialise (*Parry and Kerridge* at para 3-11;

48 Ms Neo's AEIC at paras 4–5 (ROA Vol 4, p 1049).

Halsbury's at para 190.228). However, the Flat is then included in the residuary clause, which means that the appellant would acquire the Flat *even if* the condition is not met. The 2008 Will therefore purports to dispose of the Flat in two inconsistent ways. If all the provisions of the 2008 Will are given effect, then the Flat would be included in the residuary estate addressed in cl 5. This means that the appellant would acquire the Flat even if he does not satisfy cl 4. This would be a perverse outcome, since it removes any incentive for the appellant to comply with [T]'s wishes. It is very doubtful that this is what [T] intended, and suggests that [T] did not know or approve of these terms.

43 Since [T] was illiterate and did not speak English, she would have depended entirely on Ms Neo to communicate the effect of the provisions of the 2008 Will to her in Hokkien. Ms Neo gave evidence that before affixing her signature as witness to the 2008 Will, she "explained the contents of the 2008 Will to [T] in the Hokkien dialect" and that [T] "appeared to understand the same, and confirmed that those were her testamentary wishes before signing".[49] She also said that as a matter of practice, she would "make sure [testators] understand" in "whatever dialect" before they signed.[50] Ordinarily, proving that the will was explained to a testator is strong evidence that the testator knew and approved of its contents (see [37(d)] above). However, I am doubtful that the provisions of the 2008 Will were explained meaningfully to [T], for the following reasons.

44 Ms Neo was unable to reconcile or explain the two contradictory provisions in the 2008 Will regarding the Flat. Her own evidence regarding [T]'s instructions simply perpetuated the contradiction. In her AEIC, to which

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49 Ms Neo's AEIC at para 7 (ROA Vol 4, p 1050).

50 NE (22 January 2018) at p 145 lines 22–30 (ROA Vol 1, p 189).

she appended her minutes from her meeting with [T], Ms Neo described [T]'s instructions as follows:[51]

> [T] communicated to me in the Hokkien dialect her testamentary wishes, which were, in substance, that "I want to transfer my property ownership to my son [the appellant] and to have the said property registered in his name. *In exchange for the transfer abovementioned, I want my said son [the appellant] to distribute equally $130,000.00 from his own funds to the following*". The list of beneficiaries and amounts due to them were produced by [T] and [the appellant]. [emphasis added]

45 Ms Neo's minutes of her meeting with [T] reproduce these instructions. The most sensible and straightforward interpretation of the italicised words is that the transfer of the Flat to the appellant was to be conditional upon his distributing the sum of $130,000. Indeed, the appellant himself submits that cll 3 and 4 express [T]'s testamentary intentions, such that the distribution of $130,000 is a condition precedent to the gift of the Flat.[52] However, during cross-examination, Ms Neo said she was "very sure" it was [T]'s intention to confer the Flat on the appellant, which was why she had *specifically repeated* it in cl 5. She wanted "to make sure that it's very, very clear".[53]

46 Ms Neo made no other attempt to explain the obvious tension between cll 3 and 4 on one hand and cl 5 on the other, or how the operation of cll 3–5 would realise [T]'s intentions. This indicates to me that Ms Neo had not applied her mind carefully to their effect and operation. In that case, Ms Neo would not have discussed the same with [T], and [T] would not have known or approved of the contents of the 2008 Will. Indeed, the minutes which Ms Neo recorded from her meeting with [T] comprise only a perfunctory record of [T]'s

[51] Ms Neo's AEIC at para 5 (ROA Vol 4, pp 1049 and 1055); see also NE (22 January 2018) at p 84 lines 10–16 and p 95 lines 1–8 (ROA Vol 1, pp 128 and 139).

[52] Appellant's Case at paras 19 and 25.

[53] NE (22 January 2018) at p 99 lines 17–23 (ROA Vol 1, p 143).

instructions. The minutes do not record Ms Neo explaining the 2008 Will back to [T] or discussing the meaning or consequences of its terms, particularly the inconsistency between cll 3 and 5. This was despite the fact that, as the District Judge observed at [24] of the GD, Ms Neo considered this to be an "unusual" will and did not follow the "standard format". If this was a simple and ordinary will, Ms Neo said she would have gotten her secretary to draft it. Ms Neo instead took it upon herself to draft the will because it was not simple.[54] Despite this, she does not appear to have discussed the effect of these clauses with [T] in any real depth.

47 My doubts regarding Ms Neo's evidence that [T] understood the 2008 Will are further compounded by the fact that its terms do not seem to give effect to the instructions which Ms Neo recorded in her minutes of meeting. Besides the contradiction between cll 3–4 and 5, the minutes record that the sum of $130,000 was to be divided "equally" between the relevant persons. But the 2008 Will gave the respondent more than twice as large a portion from the $130,000 as each of the other persons named. This means that either Ms Neo's record of [T]'s instructions was inaccurate, or she did not draft the 2008 Will in accordance with them.

48 Besides Ms Neo's minutes of meeting and her evidence regarding her usual practice when preparing a will for a client, Ms Neo could not recall any of the details of her meeting with [T]. She was unable to recall who (besides T) was present when the will was prepared, whether [T] had made a prior appointment, what time they met or how long it took her to draft the will. She said, "10 years ago I definitely cannot remember. I---I don't even know who are they."[55] While Ms Neo cannot be faulted for being unable to recollect events

54 NE (22 January 2018) at p 58 lines 6–19, p 64 lines 13–24, p 73 lines 24–29, p 194 lines 20–31 (ROA Vol 1, pp 102, 108, 117, 238).

which transpired more than a decade ago, this meant that the only evidence of what transpired during her meeting with [T] was the minutes she recorded, which were unsatisfactory for the reasons I have explained. The only other person at the meeting, Ms Neo's secretary, was not called as a witness.

49 The minutes of meeting recorded by Ms Neo and her evidence at trial therefore suggested to me that the rather unusual contents of the 2008 Will had not been explained to [T] in sufficient detail or clarity as to enable her to understand and approve them. The Court of Appeal warned in *Low Ah Cheow and others v Ng Hock Guan* [2009] 3 SLR(R) 1079 at [38] that, where the construction of the terms of a will is contested, a failure on the drafting solicitor's part to keep proper attendance notes and/or records may have adverse consequences, and might even persuade the court to doubt the veracity of the drafting solicitor's testimony if a dispute arose as to the purport of the terms of the will. This, unfortunately, was the case here.

(2) [T]'s conduct towards the appellant and her conversation with other family members

50 Even leaving aside my doubts stemming from the terms of the 2008 Will and Ms Neo's evidence, the evidence from the respondent and his witnesses suggested that [T] was not aware of the import of the 2008 Will, namely that the appellant would inherit the Flat on her death. [T] was hostile towards the appellant, appeared anxious to prevent him from acquiring the Flat, and made various attempts to ensure that he would not do so. Taken together, these factors suggest that *had [T] properly understood* the effect of the 2008 Will, she would have revoked or amended it. The most persuasive explanation for her failure to

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55 NE (22 January 2018) at p 59 (ROA Vol 1, p 103).

do so is that she did not fully understand the meaning of its provisions. I set out the evidence below.

51 After the appellant began living with [T] in 2008, their relationship started to deteriorate due to quarrels and disagreements.[56] According to [C], in mid-2008 to early 2009, [T] had a "very serious quarrel" with the appellant over money that he owed or promised to pay her.[57] At the very latest their relationship broke down in 2010, when [T] was purportedly locked out of the Flat. (According to the respondent, [T] treated the appellant and his family "nicely" and "equally" until then.[58]) Sometime in 2010, [T] went to the Flat only to find that the appellant had changed the lock and that she was locked out.[59] She then went to the respondent's place crying and said the appellant had locked her out of her own flat.[60] She also called [N] and told her the same thing.[61] (The appellant claims that the locks were not changed and that [T] had forgotten her keys,[62] but [N] was sure that [T] had been locked out because [T] would carry her keys with her.[63] In any event, the appellant does not dispute that [T] *believed* she had been locked out.) From 2005 to 2010, [T] divided her time between her own flat and the respondent's house, spending her weekdays at the respondent's house and returning to her flat on weekends. But after 2010, [T] began to stay at the

56 [N]'s AEIC at para 7 (ROA Vol 5, p 1296).

57 [C]'s AEIC at para 14 (ROA Vol 5, p 1302).

58 [K]'s testimony in NE (24 January 2018) at p 78 line 19 (ROA Vol 2, p 471); the respondent's AEIC at para 9 and Exhibit "KKY-X06" at para 5.3 (ROA Vol 5, pp 1078 and 1194); the respondent's testimony in NE (30 January 2018) at p 34 lines 24–26 (ROA Vol 4, p 965).

59 NE (25 January 2018) at p 58 line 16 – p 59 line 19 (ROA Vol 3, pp 618–619).

60 The respondent's AEIC at para 9 (ROA Vol 5, p 1078).

61 NE (24 January 2018) at p 112 (ROA Vol 2, p 505).

62 Appellant's AEIC at para 20 (ROA Vol 4, p 984); Reply and Defence to Counterclaim at para 4 (ROA Vol 6, p 1336).

63 NE (24 January 2018) at p 113 line 32 – p 114 line 1 (ROA Vol 2, pp 506–507).

respondent's house on a more permanent basis and only returned to the Flat occasionally to collect her belongings.[64] The evidence from the witnesses, besides the appellant, consistently painted a portrait of deep hostility and resentment on [T]'s part towards the appellant:

(a) [K] gave evidence that from time to time – though he did not say when – [T] complained to him about the appellant. She alleged that the appellant owed her a large sum of money, had borrowed money from her, and had ill-treated and cheated her.[65] From early 2008, [T] would demand payments from the appellant and also sought [K]'s help to ask the appellant for payments. According to [K], one of the main reasons for the breakdown in their relationship was that [T] did not receive any money from the appellant after his family moved in with her. When [K] asked the appellant, the appellant said he did not have the money to pay [T].[66]

(b) [T] also told [N] that the appellant mistreated her. Whenever the appellant was mentioned, [T] would angrily raise her voice and was visibly upset about how he and his family had treated her. She often complained about the appellant's disrespect for her.[67]

(c) [C] gave evidence that the appellant had a very bad relationship with [T] and had, over the course of many years, "borrowed" or taken

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64 [N]'s AEIC at paras 3 and 4 (ROA Vol 5, pp 1294–1295); [N]'s testimony in NE (24 January 2018) at p 91 line 22 – p 92 line 22, p 95 lines 2–3 and p 100 lines 1–9 (ROA Vol 2, pp 484–485, 488 and 493).

65 [K]'s AEIC at para 6 (ROA Vol 5, p 1309); [K]'s testimony in NE (25 January 2018) at p 36 line 14 – p 38 line 8 (ROA Vol 3, pp 596–598).

66 [K]'s AEIC at para 12 (ROA Vol 5, p 1312).

67 [N]'s AEIC at para 6 (ROA Vol 5, p 1295); [N]'s testimony in NE (24 January 2018) at p 101 (ROA Vol 2, p 494).

thousands of dollars from her. [T] once told [C] that the appellant owed her hundreds of thousands of dollars. From 2008 onwards, [T] began demanding payments from the appellant and told [C] that she had asked [K] and [J] to also demand payments from the appellant. [T] constantly said that the appellant owed her money and had not paid her anything since moving into the Flat. [T] also repeatedly told [C] that she had been cheated by the appellant, though she was not able to say exactly how.[68]

(d) [J] testified that [T] had told him many times that the appellant did not give her a single cent and that her relationship with him was very bad. [T] allegedly said she did not want to see the appellant and that he would drive her to her grave.[69] She repeatedly demanded $150,000 from the appellant, which was the amount that she said he owed her. She also asked [J] to help her demand money from the appellant on many occasions between 2012 and 2014.[70]

(e) [T] told [L] that she never forgave the appellant for what he had done, though [L] did not elaborate on this.[71]

(f) [T]'s caregiver from late 2015 until she passed away gave evidence that [T] told her in Mandarin many times that she did not treat the appellant as her son because he "snatched her things", including the Flat.[72]

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68 [C]'s AEIC at paras 4 and 15(c) (ROA Vol 5, pp 1299 and 1303); NE (26 January 2018) at p 90 lines 15–24, p 115 lines 20–23, 29–32 (ROA Vol 3, pp 733, 758).

69 [J]'s AEIC at paras 9(a), 9(b) and 9(e) (ROA Vol 5, p 1244).

70 [J]'s AEIC at paras 13 and 15 (ROA Vol 5, p 1247).

71 NE (24 January 2018) at pp 124–125 (ROA Vol 2, pp 517–518).

72 T's caregiver's AEIC at para 4 (ROA Vol 5, p 1288).

(g) On 11 March 2009, [T]'s birthday dinner was held at a restaurant. In front of all the guests, she angrily confronted the appellant and demanded that he return the money that he owed her.[73] According to [N], [T] demanded money from the appellant for occupying her flat.[74]

(h) From February to March 2011 onwards, while family members were planning her birthday celebration, [T] directed that the appellant should not be allowed to attend the celebration.[75]

(i) On 19 January 2013, at her grandson's wedding, [T] angrily confronted the appellant and demanded that he return the money he owed her.[76] According to [N], [T] shouted at the appellant something to the effect of, "you stay in my flat, you are not paying me".[77] According to [C], [T] walked up to the appellant, created a scene and demanded monies from him or that he leave her flat right away.[78]

(j) Sometime in December 2015, while warded in hospital and in the presence of her children and granddaughters, [T] very strictly directed them not to allow the appellant to visit her and said that she had disowned him.[79] [T] also directed them not to allow the appellant to attend her wake or funeral[80] and not to invite the appellant to her birthday, Chinese New Year and any family occasions.[81]

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73 The respondent's AEIC at para 11(b) (ROA Vol 5, p 1079).

74 NE (24 January 2018) at p 104 line 19 – p 105 line 7 (ROA Vol 2, pp 497–498).

75 The respondent's AEIC at para 11(c) (ROA Vol 5, p 1079).

76 The respondent's AEIC at para 11(a) (ROA Vol 5, p 1079).

77 NE (24 January 2018) at p 106 lines 26–30, p 107 lines 9–19 (ROA Vol 2, pp 499 and 500).

78 [C]'s AEIC at para 15(d) (ROA Vol 5, p 1304).

79 The respondent's AEIC at para 11(d) (ROA Vol 5, p 1080); [K]'s AEIC at para 4(b) (ROA Vol 5, p 1310).

(k) [T] refused to attend the wedding of the appellant's daughter because of her hostility towards the appellant.[82]

(l) [K] testified that [T] "hated" the appellant.[83] [J] also testified that there was "hatred" between them and described their relationship as "very, very bad".[84]

52 By contrast, the respondent appears to have enjoyed the closest relationship with [T]. [C] described him as [T]'s "favourite son". By all accounts he was doting and filial. When the respondent purchased his house 20 years ago, he built and custom-fitted a room for [T].[85] [T] began occasionally staying at his house from 2005 onwards. The respondent provided for her accommodation, daily needs, maintenance and her recurring medical bills and other expenses, including the salary for her helper and her maid levy. He purchased a special hospital bed and "poo-sit" and paid for regular house visits from doctors and medicine. When [T] was bedridden, the respondent fed and showered her.[86] The fact that he was the sole nominee for the balance of [T]'s CPF funds also suggests that he was favoured.[87]

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80 The respondent's AEIC at para 11(e) (ROA Vol 5, p 1080); [K]'s AEIC at paras 4(c) and 14 (ROA Vol 5, pp 1310 and 1313); the respondent's testimony in NE (30 January 2018) at p 13 lines 1–5 (ROA Vol 4, p 944).

81 [C]'s AEIC at para 8 (ROA Vol 5, p 1300), NE (26 January 2018) at p 71 lines 13–14 (ROA Vol 3, p 714).

82 NE (29 January 2018) at p 52 lines 19–24 (ROA Vol 4, p 855).

83 [K]'s testimony in NE (25 January 2018) at p 66 lines 25–27 (ROA Vol 3, p 626).

84 NE (26 January 2018) at p 143 lines 11–12 (ROA Vol 3, p 786).

85 [C]'s AEIC at paras 13–14 (ROA Vol 5, p 1302).

86 The respondent's AEIC at paras 2 and 18; KKY-X06 para 5.5 (ROA Vol 5, pp 1076, 1083 and 1194).

87 The respondent's AEIC at para 16 (ROA Vol 5, p 1082).

53 The District Judge found the respondent and his witnesses – particularly [C], [N] and [J] – to be "very forthright in their responses and they were not prone to exaggeration" (the GD at [27(vii)]). She also stated that [K] was not an untruthful witness, notwithstanding that he had misrepresented his educational qualifications, because that alone did not signal a propensity to lie. Moreover, he "did not stand to gain a large inheritance whichever will was to be deemed valid" (the GD at [27(ii)]). She also said that [J] did not stand to inherit significantly under the 2004 Will (the GD at [27(iii)]).

54 It was not quite right for the District Judge to say that [K] and [J] did not stand to inherit significantly under the 2004 Will, because it appears that they (and the other beneficiaries under the 2004 Will) would have gained significantly more under the 2004 Will than the 2008 Will. The respondent asserted that the value of the Flat was no higher than $400,000[88] while the appellant estimated its value variously as "about $500,000.00"[89], "$600,000 to $700,000"[90] and "from $700,000 to $780,000".[91] In addition to the Flat, [T]'s estate would have included the $50,000 fixed deposit in her name and found in the security box.[92] This means that the respondent would have acquired between $168,750 (valuing the Flat at $400,000) and $311,250 (valuing the Flat at $780,000) under the 2004 Will, compared to receiving $50,000 from the appellant under the 2008 Will. [K], [L], [J] and [C] would have acquired between $56,250 and $103,750 under the 2004 Will compared to receiving $20,000 from the appellant under the 2008 Will.

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88 NE (29 January 2018) at p 123 lines 2–3 (ROA Vol 4, p 926).

89 Defendant's (Respondent's) opening statement below at p 9 para (e) (ROA Vol 6, p 1440).

90 Appellant's Case at para 79.

91 Minute sheet dated 14 August 2018, p 1.

92 Appellant's Case at para 79.

55 Notwithstanding this, I agree with the District Judge's assessment that the respondent and his witnesses were credible. The mere fact that they stand to benefit more under the 2004 Will is not enough to vitiate their credibility. Judging by the notes of evidence from trial, the respondent came across as a son who loved his mother deeply and dearly, to the point that he was brought to tears at one point while describing the grief that the appellant had caused [T].[93] The other witnesses unanimously testified that the respondent had contributed the most to caring for [T]. They too generally came across as honest and forthcoming, and were ready to admit they could not remember certain events. When they did speak to what they could recall, their evidence was largely consistent. Though the appellant claimed that his siblings looked down on him, he himself testified that he was on "not bad" terms with [L], and that he was able to communicate best with [J] and would call him and ask him out for coffee when there were important matters to discuss.[94] Moreover, the evidence from [N] and [T]'s caregiver – which largely corroborated the other witnesses' evidence – is less likely to have been tainted by any impure motive, since they are not mentioned in either will. (I note that [T]'s caregiver continues to be employed by one of [L]'s daughters,[95] but there was no suggestion that she was coached, and her oral evidence did not come across as rehearsed.) The only witness whose evidence was not entirely satisfactory was [J], because the striking similarities between the 2008 Will and the 2011 Document strongly suggest that [J] borrowed from the language of the 2008 Will in drafting the contents of the 2011 Document (see [14]–[15] above), contrary to his claim that he adapted the language from the results of an Internet search. Against that, however, it should be noted that [J] had the best relationship with the appellant

93 NE (30 January 2018) at p 34 line 24 – p 35 line 22 (ROA Vol 4, pp 965–966).

94 NE (24 January 2018) at p 6 line 29 – p 7 line 5, p 18 lines 25–28 (ROA Vol 2, pp 399–400, 411).

95 NE (24 January 2018) at pp 33–35 (ROA Vol 2, pp 426–428).

of all the siblings[96] and took the most conciliatory approach towards him before [T]'s death (see the GD at [27(iii)]). Yet, even [J] testified that there was hostility between [T] and the appellant. Moreover, even if [J] *had* seen the 2008 Will, that has no direct bearing on whether [T] understood and approved of its contents when she signed it. Ultimately, the appellate court should be very hesitant to disagree with the trial judge's findings on the credibility of the witnesses, given the obvious advantage the trial judge enjoys in witnessing their evidence first-hand. I see no reason to disagree with the District Judge's assessment in this regard.

56 Accepting the evidence of these witnesses, then, it is obvious that [T] harboured profound resentment and animosity towards the appellant. She favoured the other children much more in comparison, and shared a special bond with the respondent, who took the most care of her. It therefore seems objectively unlikely that [T] intended the appellant to inherit the Flat – her most valuable possession – upon her death. That would result in the appellant receiving a much larger benefit than the respondent. This seems incongruent with [T]'s reputation as a very fair person.[97]

57 The mere fact that [T] was hostile towards the appellant would not ordinarily persuade me that she did not understand the 2008 Will, particularly since such hostility may only have arisen after the will was executed. Importantly, however, there is evidence that [T] did not mean to bequeath him the Flat, and did not realise she had done so:

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96 Appellant's testimony in NE (24 January 2018) at pp 6–7 (ROA Vol 2, pp 399–400).

97 [C]'s testimony in NE (26 January 2018) at p 28 lines 11–17 (ROA Vol 3, p 671); [K]'s AEIC at para 16 (ROA Vol 5, p 1313) and his testimony in NE (25 January 2018) at p 67 line 14 – p 68 line 7 (ROA Vol 2, pp 627–628); the respondent's AEIC at para 14 (ROA Vol 5, p 1081).

(a) [C] testified that [T] kept saying she had been cheated out of her house and had been chased out of her house.[98] It was "quite clear" to [C] that [T] "knew she was being cheated by [the appellant], only that she did not know how he did it". [C] felt "sure that [T] did not know nor was she aware that the paper she was then signing on 7 June 2008 … was meant to be a testamentary Will."[99]

(b) On multiple occasions, including when she was warded in hospital in 2015, [T] expressed fury with the appellant and insisted that her sons recover the Flat back from the appellant.[100] [K] and [J] testified that they did not know at the time what [T] meant by "recovering the flat back" from the appellant, but came to believe – after the 2008 Will surfaced – that she must have been referring to the 2008 Will.[101] [K] testified that [T] said, "This house I will definitely not give to [the appellant]. And do your utmost best to recover the house for me."[102]

(c) [C] related an incident around June 2015, when [T] started talking about the appellant and her flat. When [C] asked [T] what would happen to the Flat, [T] "said in hokkien that since there is nothing she can do to chase him out, when she dies, he will be chased out anyway and let the government and law deals with him".[103] [T] would not have

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98 [C]'s AEIC at para 9 (ROA Vol 5, p 1300); NE (26 January 2018) at p 22 lines 13–23 (ROA Vol 3, p 665).

99 [C]'s AEIC at para 11 (ROA Vol 5, p 1301).

100 The respondent's AEIC at para 11(e) (ROA Vol 5, p 1080); [K]'s AEIC at para 4(d) (ROA Vol 5, p 1310); [K]'s testimony in NE (24 January 2018) at p 73 line 3 – p 74 line 21 (ROA Vol 2, pp 466–467).

101 [J]'s AEIC at para 4(d) (ROA Vol 5, p 1242); [J]'s testimony in NE (26 January 2018) at p 142 lines 23–27 (ROA Vol 3, p 785); [K]'s AEIC at para 4(d) (ROA Vol 5, p 1310).

102 NE (24 January 2018) at p 73 lines 16–17 (ROA Vol 2, p 466).

said this if she believed that the appellant would own the Flat upon her death.

(d) The respondent also related an incident which had occurred on a Sunday afternoon sometime around September 2015. The respondent asked [T] how she was going to settle the outstanding issue of her house with the appellant. [T] told the respondent very clearly, and with anger, that she was not giving the appellant the house. She said "no way" in Hokkien very loudly, and said that she disowned the appellant. In the weeks before her death, she continued to repeat in the same angry tone that she would not be giving her house to the appellant and that she disowned him.[104]

58 There is also evidence from [K] to the effect that [T] wanted the appellant to change the title to the Flat:[105]

> A: My mother had on a few occasions asked me to speak with [the appellant]. And he did come and speak to me ... and we---and my mother kept on asking him to go and have the name changed but he did not do so. So on behalf of our mother, we asked him the same question as well on a number of times. Why did he not go and change the name?
>
> Q: Trans---transfer it, change name, does it---re---
>
> A: Transfer [as spoken by Witness in English].
>
> Q: refer to the transfer of title for---of 79B?
>
> A: To ask him to go down to Housing Board to have a change of name.

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103 [C]'s AEIC at para 10 (ROA Vol 5, p 1301).

104 The respondent's AEIC paras 23(c)–23(f); Exhibit "KKY-X06" at para 5.3 (ROA Vol 5, pp 1085–1086 and 1194).

105 [K]'s testimony in NE (25 January 2018) at p 26 line 32 – p 27 line 17 (ROA Vol 3, pp 586–587).

59 Later on, [K] testified:[106]

> A: … [The appellant] asked his wife to retrieve an envelope from the bedroom and after that opened up the sealed envelope and took out the 2008 Will. We were very shocked how did the '08 Will come about. [The appellant] said mother had already given the flat to him as stated in the will. So I asked why did mother did not say this to all of us. And his immediate re---his immediate response, "Why did she have to tell all of you to---I'm the one---I'm the one to have lived with her, I'm the one to have renovated the house." And I asked him my mother---my mother had on many occasions asked me to go and have her name changed---
>
> Interpreter: Your Honour---I beg your pardon, Ma'am.
>
> A: My mother had on many occasion asked me to do her this favour to go and get [the appellant] to have the name changed. If he had earlier on changed the name, this would not have happened. So we disapproved and told him that we would see him in Court---oh he said, "See you in Court"---
>
> …
>
> A: Didn't I tell you earlier on my mother had on many occasion asked me to do her the favour, get [the appellant]---Your Honour, this was said inside the house and I asked him back---one---and I asked him one more time. Why did he---why did he not go and have the name changed?

60 Counsel for the appellant, Mr Tan, took this to mean that [T] wanted to transfer title of the Flat to the appellant.[107] I do not agree. From the context it appears that [T] feared that title to the Flat had *already* been transferred to the appellant, and she wanted it to be transferred *back* to her. This interpretation is further supported by an incident that occurred after the 2008 Will was executed. [T] asked [K] to drive her to HDB Hub as she needed advice from HDB regarding the Flat. [T] mentioned that she had signed a document provided by

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106 NE (25 January 2018) at p 45 line 16 – p 46 line 29 (ROA Vol 3, pp 605–606).

107 NE (25 January 2018) at p 28 lines 19–21 (ROA Vol 3, p 588); NE (29 January 2018) at p 49 line 30 – p 50 line 32 (ROA Vol 4, pp 852–853).

the appellant but did not understand its contents. After falling out with the appellant, [T] reportedly felt uneasy, did not trust the appellant and wanted to make sure that she had not transferred the Flat to him. [K] duly brought [T] to meet an HDB officer, who assured [T] that the Flat was still under her name and that it could not be sold or transferred without HDB's consent. [T] was relieved to hear that the Flat was still in her name.[108]

61 As I noted at [29] above, there is some doubt over when [T] visited HDB. If this occurred in 2009, as [K] testified at trial, then it would seem that [T]'s remarks about having signed a document she did not understand referred to the 2008 Will. But if [T] visited HDB in 2011, then [T] may have thinking about the 2011 Document instead. In either case, however, this visit to HDB shows two things. First, [T] was worried that somehow the Flat had already been transferred to the appellant. She therefore went to HDB to assuage her concerns, and was relieved when she was told that the Flat was still in her name. Secondly, [T] did not want the appellant to acquire the Flat. This is consistent with her repeated pleas to the respondent, [K] and [J] to help her "recover" the Flat and her expressed intention not to let the appellant acquire the Flat after she died (see [57(b)]–[57(d)] above). I accept that, if [T] had understood that the appellant would inherit the Flat under the terms of the 2008 Will, she would have revoked or amended that will. This view was shared by the respondent and [C].[109] On this view, the fact that [T] was lucid until at least 2014 or 2015 supports the respondent's case. For a good seven or eight years, [T] would have been in possession of her faculties and common sense, and would have revoked the 2008 Will if she had understood its import. The fact that she did not strongly suggests that she did not know and approve of its contents.

108 NE (25 January) at p 65 lines 8–19, p 74 lines 22–25 (ROA Vol 3, pp 625 and 634).

109 NE (30 January 2018) at p 8 lines 8–15 and p 14 lines 17–21 (ROA Vol 4, pp 939 and 945); NE (26 January 2018) at p 53 lines 17–19 (ROA Vol 3, p 696).

62 Thirdly, [T]'s conduct after executing the 2008 Will suggests that she did not know that she had bequeathed the Flat on the appellant. For one, [T] never once told [C] about the terms of the 2008 Will in the next eight years of her life. This is strange because they were very close and [T] appeared to confide in [C] about every important decision. From 2004 to 2010, while [C] was overseas, she would call [T] every Sunday afternoon without fail and chat with her in Hokkien for at least an hour. They would speak about their weeks and family updates. When [T] invited the respondent, [K] and the appellant to move into the Flat with her, she updated [C] about this.[110] [C] also appears to have been the only one that [T] told about the 2004 Will and who knew the combination code to [T]'s security box. [T] even went to the trouble of showing [C] the 2004 Will when [C] visited Singapore. But the terms of the 2008 Will altered the division of [T]'s estate dramatically. Whereas the 2004 Will divided [T]'s estate between all her children and [C] with the respondent receiving a larger share than the rest, the 2008 Will made the appellant the sole beneficiary and deprived [T]'s other children and [C] of any benefit save insofar as the appellant decided to comply with cl 4. This change would have been very surprising and even distressing to [C], as well as [T]'s other children. The fact that [T] never mentioned the terms of the 2008 Will to [C] led [K], the respondent and [C] herself to the view that [T] herself was not fully aware of its import.[111]

63 The appellant does not dispute that [C] was very close to [T], but submits that [C] actually did know about the 2008 Will because of a document adduced by Ms Neo.[112] This was a piece of paper on which [C] had written the names of

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110 [C]'s and [N]'s joint affidavit, paras 4(f)–4(g) (ROA Vol 6, p 1411).

111 [K]'s AEIC at para 8 (ROA Vol 5, p 1311); the respondent's AEIC at para 7 (ROA Vol 5, p 1077); [C]'s testimony in NE (26 January 2018) at p 42 lines 11–13 (ROA Vol 3, p 685); see also Appellant's Case at para 10.

[L], [K], the respondent, [J] and [C], their IC numbers, as well as the sentence "Please amend [a misspelled version of [C]'s name] to [the correct spelling]".[113] Next to [L]'s, [K]'s, [J]'s and [C]'s names was written the number "20". Next to the respondent's name was written the number "50". These numbers were written by the appellant, allegedly on [T]'s instructions,[114] and they correspond to the amount in thousands of dollars that the appellant was to give each of these persons under cl 4 of the 2008 Will (see [7] above). At the top of the page were written the address and contact number of a dental surgery, but these were not in [C]'s handwriting.[115]

64 [C] could not remember how this piece of paper came about. However, she firmly denied that she wrote these words knowing that another will was going to be made. [C] explained that [T] would "always pull out paper like that" and ask her to write "this and that". As for the sentence requesting an amendment to the spelling of [C]'s name, it could have been the case that [C] noticed her name misspelled in the 2004 Will and told [T] to have it changed.[116] In my view, the fact that [T] had in her possession a piece of paper on which [C] had written the names which were subsequently included in the 2008 Will does not prove that [C] knew of the existence of the 2008 Will. I agree it is very odd that [T] never mentioned the 2008 Will to [C], particularly as [C] knew about the 2004 Will and would have been taken completely by surprise by the radically altered distribution under the 2008 Will.

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112 Appellant's Case at para 49; ROA Vol 4, p 1056.

113 NE (26 January 2018) p 60 line 16 – p 61 line 9 (ROA Vol 3 pp 703–704).

114 NE (23 January 2018) at p 66 lines 15–21 (ROA Vol 2, p 311).

115 NE (26 January 2018) p 63 lines 11–22 (ROA Vol 3 p 706).

116 NE (26 January 2018) p 61 line 21 – p 62 line 24 (ROA Vol 3 pp 704–705).

65 The respondent also submitted that it was odd that that [T] did not keep the 2008 Will in her security box, where she kept the 2004 Will and other valuable possessions.[117] Instead the 2008 Will was kept by the appellant. However, the appellant claimed that [T] had two security boxes: one in the respondent's house and one in the Flat. The appellant claimed that the security box in the Flat also contained important documents, such as [T]'s birth certificate, proof of citizenship, "the separation of Singapore from Malaysia and the vocational licence". [C] admitted that these documents were not in the security box which she had access to when she opened it in 2016 after [T]'s death.[118] The District Judge made no finding on this and I do not rely on it in reaching my conclusion that the presumption of knowledge and approval is rebutted.

66 Finally, I should say that I place little weight on the 2011 Document. On one view, it suggests that [T] was willing to give the Flat to the appellant in exchange for $150,000. This broadly aligns with the arrangement provided for in cll 3 and 4 of the 2008 Will, pursuant to which the appellant would inherit the Flat if he distributed $130,000 from his own funds to the persons listed therein. The appellant's position was that by giving [T] $150,000 in 2011, he had complied with the condition in cl 4 of the 2008 Will.[119] However, [J] gave evidence that [T] did not understand the import of the 2011 Document. He claimed that the appellant asked [T] and [J] to sign the 2011 Document without explaining its contents to [T], and without giving [J] a chance to read it.[120] [T] could well have thought that she was receiving $150,000 for the appellant's

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117 [K]'s AEIC at para 8 (ROA Vol 5, p 1311).

118 NE (26 January 2018) at p 104 lines 11–20 (ROA Vol 3, p 747).

119 Appellant's Reply to Respondent's Case and Oral Submissions, para 8.

120 NE (29 January 2018) at p 30 line 29 – p 31 line 21, p 33 lines 23–24 (ROA Vol 4 pp 833–832, 834).

occupation (rather than acquisition or inheritance) of the Flat, in line with their original agreement (see [6] above). [J]'s own interpretation of the 2011 Document was that it merely recorded the fact that [T] had received money from the appellant, and was not meant to express [T]'s intention to transfer the Flat to him (see [13]–[15] above). Moreover, what [T] told the other family members, particularly the respondent and [C], to whom she was close and on whom she doted, suggests that [T] was not at all willing for the appellant to acquire the Flat, even after she had received the $150,000 in 2011. It is highly unlikely that [T] would have lied to [C] and the respondent about whether the appellant would inherit the Flat, given how close she was to them. In the light of [T]'s vehement animosity towards the appellant, her pleas for others to "recover" the Flat for her, and her confiding in her loved ones that the appellant would not get the Flat after she died, I can only conclude that [T] probably did not know she had bequeathed the Flat to him.

67 For these reasons, I find that the presumption of knowledge and approval has been rebutted, and dismiss the appeal on that basis. I go on to deal with the respondent's remaining arguments for completeness.

Undue influence

Legal principles

68 Undue influence in the probate context "means coercion, i.e. the testator is coerced into making a will (or part of a will) which he does not want to make" (*Theobald on Wills* at para 3-032). There are various ways of expressing the substance of this test. It has been said, for example, that it must be shown that the testator was not merely persuaded but was pressured into losing his freedom of choice (*Halsbury's* at para 190.199); that there was pressure which overpowered the testator's volition without convincing his judgment (*Parry and*

Kerridge at para 5-16, citing *Hall v Hall* (1868) LR 1 P & D 481 at 482); and that the will of the testator is coerced into doing that which he or she does not desire to do (*Rajaratnam Kumar (alias Rajaratnam Vairamuthu) v Estate of Rajaratnam Saravana Muthu (deceased) and another and another suit* [2010] 4 SLR 93 ("*Rajaratnam*") at [67]).

69 One of the questions in this case is whether the presumption of undue influence applies in the probate context. The respondent cited *Tan Teck Khong and another (Committee of the estate of Pang Jong Wan, mentally disordered) v Tan Pian Meng* [2002] 2 SLR(R) 490,[121] in which the High Court held at [163]–[164] that undue influence could be presumed where the plaintiff showed (a) the existence of a particular relationship which enabled one party to it to influence the decisions of the other (presumably the testator); and (b) the resulting transaction was clearly disadvantageous to the person subject to the influence. However, the authority which was cited for the presumption of undue influence, *Pelican Engineering Pte Ltd v Lim Wee Chuan* [1999] 2 SLR(R) 1145, concerned a contract rather than a will. Significantly, the academic authorities suggest that undue influence cannot be presumed in the probate context:

(a) *Theobald on Wills* states that the test for undue influence in the probate context "is a different test to that applied to examples of undue influence in respect of lifetime transactions" and that in respect of wills, "[p]ersuasion or advice is legitimate but coercion is not" (para 3-032 and n 135).

(b) *Parry and Kerridge* explains at para 5-54 that applying the presumption of undue influence in the probate context is inappropriate

[121] Respondent's Case (Amendment No 1) at p 38.

for two reasons. First, undue influence in probate consists of pressure exerted on the testator, whereas the undue influence in equity stems essentially from affection, not pressure. Secondly, applying the test for presumed undue influence in the probate context would invalidate wills made in favour of those whom testators hold in regard or affection, which is precisely the point of a will in the first place.

(c) The same view is reiterated in *Halsbury's*, which states at para 190.199 that there is generally no presumption of undue influence despite the existence of a relationship between the testator and the beneficiary, and that strong evidence of undue influence is required.

These points do not appear to have been raised to the High Court in *Tan Teck Khong*. Nor has *Tan Teck Khong* been cited in any later decisions to support a presumption of undue influence in respect of a will.

70 By contrast, the contrary position has been taken in two more recent High Court decisions, which the parties did not refer me to. In *Rajaratnam*, it was held at [65] that undue influence cannot be presumed where a will is concerned and must be proved by the person alleging it. In *Lian Kok Hong v Lian Bee Leng and another* [2015] SGHC 205, the High Court held at [45] that "[i]n the case of a will where an allegation of undue influence on the testator is made, undue influence cannot be presumed and actual undue influence must be proved", and adopted the test for undue influence set out in *Rajaratnam*. There was no appeal against the High Court's finding on undue influence in that case, though the Court of Appeal noted (without disapproving) the High Court's holding that "[w]here undue influence is alleged, it cannot be presumed and must be proved" (see *Lian Kok Hong*, which was cited to me by the respondent, at [38(f)]).

71 I note, moreover, that in *Tan Teck Khong* it was alleged that undue influence infected not only a will executed by the testatrix but also various transactions entered into by her during her lifetime. This may perhaps explain the invocation of the presumption of undue influence, which *would* apply to such transactions. However, that does not necessarily mean that it ought to apply equally to a will. Indeed, the High Court also cited at [165] a treatise on wills which states that "[t]he essential element of undue influence is, in this context, coercion" and that "[p]ersuasion or influence or importunity is not sufficient". It therefore recognised that the test for undue influence in the testamentary context is that of coercion alone. The case and academic authorities strongly indicate that undue influence in this sense cannot be presumed, and I respectfully agree with them.

72 The other case that the respondent cites, *BOK v BOL and another* [2017] SGHC 316,[122] is hence irrelevant for this reason, as it did not concern a will but rather a deed of trust.

Whether [T] was unduly influenced

73 It is not clear whether the District Judge found that there was undue influence. All she said was that the will was not "one which [T] came to free from pressure" (the GD at [27(viii)]). However, the test for undue influence is a high one and requires coercion *overpowering* the testator's volition. I do not think there is any evidence to show that [T] was unduly influenced in this sense. There is no clear evidence, for example, that the appellant pressurised or forced [T] to make the 2008 Will. [N] testified that [T] was a woman of tough character, "stronger" and "[n]ot easily influenced by other people".[123] Even if

122 Respondent's Case (Amendment No 1) at p 38.

123 NE (24 January 2018) at p 86 lines 26–32 (ROA Vol 2, p 479).

[T] executed the 2008 Will without comprehending or approving of the contents fully, it does not necessarily follow that she signed it as a result of coercion.

Whether the 2008 Will was revocable and ambulatory

74 I next turn to the respondent's argument that the 2008 Will "should not be construed as a valid will as it was/is not invariably and freely revocable by T", nor was it "invariably ambulatory and effective only upon death".[124] The respondent says this for two reasons. First, the 2008 Will was "binding upon [T] as and when she put her thumb print to it" and [T] was "contractually 'forced' or bound" to confer the Flat on the appellant once the $130,000 was paid. The will was therefore "irrevocable". Secondly, the appellant allegedly considered the 2008 Will "fixed or closed when he made the payment of $130,000.00 required of him on 23 July 2011", which is contrary to the rule that a will operates on the death of the testator.[125]

75 I am not at all persuaded by this submission. The respondent did not cite any authority to the effect that a condition such as that stated in cl 4 of the 2008 Will would render a will irrevocable or non-ambulatory. On the contrary, conditions are generally upheld unless they are void for illegality or contrariness to public policy; uncertainty; impossibility; repugnance to the estate; or conditions imposed *in terrorem* of the legatee (*Theobald on Wills* at paras 27-007 to 27-025). It was not contended that cl 4 was void for any such reason. I was also not referred to any authority for the proposition that a will becomes irrevocable once a condition stated therein has been performed during the testator's lifetime. On the contrary, as the appellant points out, *Theobald on*

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124 Respondent's Case (Amendment No 1) at p 10 para 7(iii), p 25, p 28 para 2.2, p 30 para 2.3.

125 Respondent's Case (Amendment No 1) at pp 26–27, 29.

Wills recognises at para 27-067 that "sometimes a condition may be performed in the lifetime of the testator".[126] Even assuming that the appellant performed the condition in cl 4 by giving [T] $150,000 in 2011, that would not have prevented [T] from revoking the 2008 Will thereafter. It merely meant that, *if* the 2008 Will remained unrevoked at the time of [T]'s death, the condition precedent would have been fulfilled. The appellant himself accepts that the 2008 Will was revocable at any point before [T]'s death.[127]

Illegality

76 I now briefly address the respondent's submission that the 2008 Will is void due to illegality.[128] The respondent's case is that the will:

> was meant to be some sort of [sale] and purchase agreement and/or instrument of property transfer cleverly crafted or disguised as a testamentary will partly to deceive/trick [T] and/or to avoid/cheat both the [IRAS] of stamp duties payable and/or HDB of levies payable on transfer.[129]

This submission is fanciful and should be rejected. There is not a shred of evidence that this motive played on [T]'s mind at the time she made the 2008 Will. The District Judge apparently saw no need to address this argument in the GD.

77 The only local authority cited by the respondent for its illegality argument, *Kamla Lal Hiranand v Harilela Padma Hari and others* [2000] 1 SLR(R) 145,[130] is not relevant. In that case, there was a document drafted in the

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126 Appellant's Reply and Oral Submissions at para 9.

127 Appellant's Reply and Oral Submissions at para 25.

128 Respondent's Case (Amendment No 1) at section 2.5.

129 The respondent's AEIC at para 21(c) (ROA Vol 5, p 1084).

130 Respondent's Case (Amendment No 1) at p 32.

form of a will but which was not signed by any witnesses. The parties all agreed that the document was not validly executed and was not a will (at [38]). However, the plaintiff, who was stated as the beneficiary under that document, tried to argue that the document created or evidenced a trust over the deceased's estate. Tay Yong Kwang JC (as he then was) rejected this argument. He cited various *dicta*, including the portion from *Towers v Hogan* (1889) 23 LR Ir 53 cited at p 32 of the Respondent's Case, in support of his conclusion that "[d]ocuments meant to be testamentary in character (*ie* having no effect during the life of the maker) which do not comply with the Wills Act cannot … become virtual wills by being regarded as declarations of trust" (at [42]). Since the document was not valid as a will, it was void, and should not be given effect by the backdoor through the device of an implied declaration of trust. Tay J's decision had nothing to do with voiding an otherwise valid will because of illegality.

Conclusion

78 For the reasons I have stated in this judgment, I dismiss the appeal on the basis that [T] did not know and approve of the contents of the 2008 Will. In the circumstances, the construction of the 2008 Will does not arise for my consideration.

79 I will hear the parties on costs.

Tan Puay Boon
Judicial Commissioner

Tan Siew Tiong and Lee Kang Lin (LawHub LLC) for the appellant;
Tay Choon Leng John and Conrad De Souza (John Tay & Co)
for the respondent.
